EX PARTE OR LATE FILED

WITN 7

Eastern Carolina's News Channel

EX PARTE OR LATE F

ORIGINAL

April 22, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules, MB Docket No. 02-277**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, I hereby submit two copies of this letter, the purpose of which is to supplement the record in the above-referenced proceeding. As set forth below, the experiences of Gray Television, Inc. ("Gray") in the Greenville—New Bern—Washington, North Carolina market (the 103rd largest DMA) illustrate the need for relaxation of the television duopoly rule to provide outlets for additional locally oriented program content—in particular, additional local news coverage. Those experiences further demonstrate that, contrary to the suggestion of some parties,[1] broadcasters face substantial obstacles in securing cable carriage of their local content beyond that provided on a "must carry" basis, and that cable operators generally do not provide a meaningful alternative to a second over-the-air distribution channel, at least in smaller and mid-sized markets.

Beginning in late 1997, WITN-TV, the Gray NBC affiliate in Washington, North Carolina, began searching for an outlet via which it could offer a ten o'clock news telecast, in addition to its regularly scheduled 11:00 pm news broadcast. The local FOX affiliate was enjoying impressive ratings for its 10:00 pm news offering, thus demonstrating a strong demand for alternatives to the traditional 11:00 pm newscast in the Greenville–New Bern–Washington, North Carolina market. Because of WITN-TV's network affiliation agreement with NBC, however, it was unable to broadcast a 10:00 pm news program. As a consequence, WITN-TV turned to cable as a possible alternative distribution outlet.

---

1 *See, e.g.*, Comments of Consumer Federation of America, Consumers Union, Center for Digital Democracy, and Media Access Project, MB Docket No. 02-277, at 156-57 (filed Jan. 2, 2003) (arguing that broadcasters have "a guaranteed right of distribution" on cable systems); Comments of the American Federation of Labor and Congress of Industrial Organizations on behalf of its 65 member unions including the American Federation of Television and Radio Artists, Communications Workers of America, National Association of Broadcast Employees and Technicians of the CWA, The Newspaper Guild of the CWA, Writers Guild of America, East, Inc., and the Department for Professional Employees, AFL-CIO, MB Docket No. 02-277, at 14 (filed Jan. 2, 2003) (contending that cable systems "cannot be deemed to be distinct voices in the marketplace because they are owned and controlled by the same media conglomerates that control radio, television, and newspapers").

No. of Copies rec'd 0+2

Post Office Box 468 • Washington, North Carolina 27889 • (252) 946-3131
A Subsidiary of Gray Communications Systems, Inc.

WITN-TV attempted to negotiate carriage agreements with the two largest cable companies—Time Warner Cable and Multimedia Cable—in the area. Negotiations with Time Warner Cable, which has approximately 104,000 subscribers in the southern portion of the market, were not successful. Multimedia Cable, which serves approximately 107,000 subscribers in the communities of Greenville, Rocky Mount, Kinston, Washington, and New Bern, was interested—but because their cable systems are not interconnected, there is no centralized delivery mechanism in place via which the live telecast could be distributed to the various cable system head ends. As a consequence, WITN-TV was limited to providing a ten o'clock newscast on just one cable system—in Greenville—serving only approximately 31,000 subscribers.

On April 20, 1998, WITN-TV debuted its 10:00 pm newscast. Unlike its competitors, WITN-TV utilized its regular 6:00 pm and 11:00 news anchors in order to provide local viewers with the best news and information possible during the time slot. Unfortunately, due to the telecast's limited distribution, it was unable to compete with the FOX affiliate's news show, which was broadcast throughout the DMA. As a result, and after roughly only 15 months, WITN-TV was forced to abandon its efforts to provide a competing 10:00 pm newscast to the Greenville–New Bern–Washington, North Carolina market.

As this specific, real-world example demonstrates, mid-sized and smaller market stations do not necessarily have access to as many media outlets for their locally produced programming as some commenters have suggested. Given such limitations, the economic conditions faced by smaller market broadcasters—and thus their need for regulatory relief—cannot be overstated. Indeed, absent relaxation of the television duopoly restriction in smaller markets, an ever-increasing number of stations may find the costs associated with producing news and other local programming prohibitively high.

Post Office Box 468 • Washington, North Carolina 27889 • (252) 946-3131
A Subsidiary of Gray Communications Systems, Inc.

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

Michael D. Weeks
President
General Manager

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Susan M. Eid, Legal Advisor to Chairman Powell
Stacy Robinson, Legal Advisor to Commissioner Abernathy
Jordan Goldstein, Legal Advisor to Commissioner Copps
Catherine Crutcher Bohigian, Legal Advisor to Commissioner Martin
Johanna Mikes, Legal Advisor to Commissioner Adelstein
W. Kenneth Ferree, Media Bureau Chief
Paul Gallant, Special Advisor, Media Ownership Working Group
Mania Baghdadi (via hand delivery and email)
Linda Senecal (via hand delivery and email)